

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8938 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD ILIAS @ RAJA DUM ABDUL REHMAD SHAIKH DETENUE

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 1st September, 1998 made by the Commissioner of Police, Surat city, under the powers conferred upon him under Sub-section 1 of Section 3 of

the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. Alongwith the order of detention, the petitioner has been served with the grounds of detention. It appears that three offences punishable under Chapter XVI of the Indian Penal Code have been registered against the petitioner and his accomplice, two of which are pending trial and the last of the three is pending investigation. Besides the said registered offences, the police has also recorded statements of two witnesses who have stated about incidents that occurred on 4th June, 1998 and 9th August, 1998. It is alleged that on 4th June, 1998 at around 10.30 p.m., the petitioner and his accomplice had intercepted the witness and his friend on the road and tried to rob them, the witness having resisted, was beaten by the petitioner. Upon witness raising an alarm, the people had gathered there. With a view to dispersing the people, the petitioner and his accomplice pursued them with lethal weapons like sword and Dharria. A similar incident is reported to have occurred on 9th August, 1998 at around 9.00 p.m at night by the second witness. In the said incident also, the petitioner is alleged to have used sword for committing the crime and for dispersing the crowd gathered there. On the basis of above evidence, the detaining authority has held that the petitioner is a 'dangerous person' within the meaning of Section 2 (c) of the Act and that his activities are prejudicial to the maintenance of public order.

4. The impugned order has been challenged on the grounds that even if the allegations made against the petitioner were believed, the petitioner's activities can at the most be said to be detrimental to the maintenance of law and order and it cannot amount to disturbance to the public order. Each of the offences, registered or unregistered, is directed against particular individual/individuals and cannot affect the even tempo of life or the public tranquillity. Besides, the detaining authority has wrongly claimed privilege under Section 9 (2) of the Act by withholding the names and other particulars of the witnesses. In absence of such particulars, the petitioner's constitutional right to make effective representation has been infringed. The impugned order is, therefore, vitiated and requires to be quashed and set-aside.

5. I am afraid I cannot agree with the either of the above contentions. I have perused the complaints lodged in each of the aforesaid three offences. The manner in which the said three offences are alleged to have been

committed by the petitioner and his accomplice is sufficient to hold that petitioner's activities are prejudicial to the maintenance of public order. Two of the said offences have been committed in broad day light, in a thickly populated area of the City. The third offence though was committed at the residence of the complainant, several people had gathered at the scene of the crime and the manner in which the crime is alleged to have been committed would certainly disturb the public tranquillity of the locality and would cause a feeling of insecurity in the minds of the people. Further, the privilege claimed under Section 9 (2) of the Act cannot be said to be unwarranted. The statements of both the witnesses have been duly verified by the concerned police officer. Both the witnesses were offered police protection and inspite of such an offer being made, both of them have refused to give statements against the petitioner, unless they were assured anonymity. This is sufficient to hold that but for the assurance of anonymity, these witnesses were not ready to give evidence against the petitioner. The privilege claimed by the detaining authority, is therefore, fully justified. This contention is, therefore, required to be rejected.

6. For the aforesaid reasons, the petition is dismissed. Rule is discharged.

Prakash*